



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of X-Port Motors, Inc.

Case No.: TR-12-0026

FINAL DECISION

On June 15, 2012, an employee of the Division of Motor Vehicles, Department of Transportation filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of X-Port Motors, Inc. The claim along with documents gathered by the Department during its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on December 3, 2012. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Transportation
Division of Motor Vehicles
Dealer and Agent Section
P.O. Box 7909
Madison, WI 53707

Anna Thompson
X-port Motors, Inc.
3655 Flagstone Circle
Middleton, WI 53562

Mark Elliot Weiss
X-port Motors, Inc.
100 Canterbury Court
Waunakee, WI 53597

Capitol Indemnity Corporation
P.O. Box 5900
Madison, WI 53704

FINDINGS OF FACT

1. X-Port Motors, Inc., (Dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation (Department) pursuant to Wis. Stat. § 218.0111. The Dealer's facilities were located at 1136 East Washington Avenue, Madison, Wisconsin. The Dealer is no longer in business.

2. The Dealer had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force commencing on February 20, 2009 (Capitol Indemnity Corporation Bond No. 60079550). The bond was cancelled effective April 29, 2010.

3. Between March 2, 2009, and August 17, 2009, the Dealer failed to electronically process applications for 23 motor vehicles for vehicles that it sold to retail customers. On September 21, 2009, Olegs Plolakous, the owner of X-Ports, Inc., surrendered the Dealer's motor vehicle dealer license and dealer plates to the Division of Motor Vehicles (DMV). At the same time, Mr. Plolakous submitted to the DMV the Wisconsin Title and Registration Applications (MV-11s) for the 23 motor vehicles that the Dealer had failed to process electronically. However, the Dealer failed to submit the required fees to process the applications.

4. On June 15, 2012, the DMV submitted a claim against the surety bond of the Dealer in the amount of \$3,027.50. The amount of the bond claim represents the sum of the unpaid fees for the 23 MV-11s submitted to the DMV.

5. The Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

6. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$3,027.50.

7. The DMV's claim arose during the time period between March 2, 2009, and August 17, 2009. The bond claim was filed within three years of the ending date of the one-year period that a surety bond issued by Capitol Indemnity Corporation was in effect and is, therefore, timely claim.

CONCLUSIONS OF LAW

1. The DMV's claim arose during the time period between March 2, 2009, and August 17, 2009. Capitol Indemnity Corporation issued a one year surety bond to the Dealer covering a one-year period commencing on February 20, 2009. The claim arose during the period covered by the surety bond.
2. The DMV filed the claim against the motor vehicle dealer bond of the Dealer on June 15, 2012. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.
3. The DMV's loss was caused by an act of the Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$3,027.50.
4. The Division of Hearings and Appeals has authority to issue the following order:

ORDER

The claim filed by the Division of Motor Vehicles against the motor vehicle dealer bond of X-Port Motors, Inc., is APPROVED in the amount of \$3,027.50. The Capitol Indemnity Corporation shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of X-Port Motors, Inc.

Dated at Madison, Wisconsin on January 10, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.